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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN D. FRAVEL

Appeal 2009-005459
Application 10/041,959
Technology Center 3600

Decided: December 14, 2009

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and
DANIEL S. SONG, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-15. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM¹.

THE INVENTION

The Appellant's claimed invention relates to a method for generating, clipping and redeeming coupons over the Internet. (Spec. p. 4, ll. 1-6).

Independent claim 1, which is deemed to be representative, reads as follows:

1. A method, comprising the steps of:
 - providing a database;
 - registering manufacturers who provide electronic coupons for their manufactured goods in said database, wherein each registered manufacturer is provided with a manufacturer's account;
 - registering retailers who sell said manufactured goods in said database, wherein each registered retailer is provided with a retailer's account;
 - registering consumers who may buy said manufactured goods in said database, wherein each registered consumer is provided with a numbered consumer account and an account card that contains said numbered consumer account;
 - providing a website where said registered manufacturers post electronic coupons and said registered consumers select from said electronic coupons,

¹ Our decision will make reference to the Appellant's Appeal Brief ("Br.," filed Jun. 10, 2008) and the Examiner's Answer ("Ans.," mailed Sep. 3, 2008).

wherein said electronic coupons selected by said registered consumers are assigned to consumer accounts for those consumers in said database; establishing a telecommunications link between a registered retailer and said database when a registered consumer purchases a product at a registered retailer and submits said account card at checkout, wherein data is exchanged through said link that determines if the consumer has previously selected an electronic coupon for said product at said website; and discounting said product at the registered retailer if said electronic coupon for said product is present in the consumer account for that consumer.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Fajkowski	5,905,246	May 18, 1999
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The Examiner rejected claims 1-3, 5-10, and 12-15 under 35 U.S.C. § 102(b) as anticipated by Fajkowski. Additionally, the Examiner rejected claims 4 and 11 under 35 U.S.C. § 103(a) as unpatentable over Fajkowski.

Rather than repeat the arguments of the Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by the Appellant have been considered in this decision. Arguments that the Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

1. Has the Appellant shown that the Examiner erred in finding that Fajkowski discloses a website where manufacturers post electronic coupons and consumers select from said electronic coupons, as recited in independent claims 1 and 6?

2. Has the Appellant shown that the Examiner erred in concluding that it would have been obvious to one of ordinary skill in the art to charge a manufacturer for posting electronic coupons on a database, as recited in claims 4 and 11?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence:

1. Fajkowski is directed to a system for the electronic management and redemption of electronic coupons received from the Internet. The background of the invention addresses the problems and inefficiencies with traditional paper coupons and presents a system for electronically collecting, carrying and redeeming electronic coupons received from the Internet. (Abs., col. 2, ll. 26-28, col. 3, ll. 51-53, and col. 6, ll. 35-37).

2. Fajkowski discloses, “[t]he adapter of the present invention avoids any need for paper by transmitting the coupon directly to the coupon card.” (col. 6, ll. 27-29).

3. Fajkowski describes an electronic clearinghouse which acts as a remote database for the use and benefit of retailers, manufacturers and consumers. (col. 5, ll. 20-22).

4. The system of Fajkowski allows users to select and download electronic coupons to a disk drive. (col. 6, ll. 35-39).

5. The electronic coupons of Fajkowski are distributed to users via the Internet. (col. 6, ll. 20-23).

6. Fajkowski describes that to redeem the electronic coupon, a consumer inserts the coupon card 1 into a periphery device 100 which electronically transmits the coupon to a cash a cash register 150. (col. 28, ll. 39-44).

7. Fajkowski discloses that, “[s]oftware may also be readily adapted to render receiving coupons over the Internet more user friendly by allowing the coupon card owner to navigate the coupon card Internet service.” (col. 29, ll. 52-55).

8. Additionally, Fajkowski discloses, “[t]he software will also allow users to browse the coupons available on the internet site and categorize and store the coupons retrieved from the Internet in coupon card 1 in the same categories as exist on coupon card 1.” (col. 29, ll. 59-62).

9. Fajkowski describes that manufacturers supply future coupons to the clearinghouse for consumers. (col. 5, ll. 22-30).

PRINCIPLES OF LAW

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407.

In *KSR*, the Supreme Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 417.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). If this initial burden is met, the burden of coming forward with evidence or argument shifts to the Appellants. *In re Oetiker*, 977 F.2d at 1445. *See also In re Piasecki*, 745 F.2d at 1472.

ANALYSIS

ISSUE 1

Claims 1-3, 5-10, and 12-15 rejected under 35 U.S.C. § 102(b) as anticipated by Fajkowski.

The Appellant generally argues that Fajkowski fails to disclose, “providing a website where said registered manufacturers post electronic coupons and said registered consumers select from said electronic coupons, wherein said electronic coupons selected by said registered consumers are assigned to consumer accounts for those consumers in said database” as recited in claim 1. (Br. 5). Specifically, the Appellant argues “. . . it clearly states in the Fajkowski patent that printed coupons (paper coupons) are scanned into the coupon card assemblies.” (Br. 5). We are not persuaded by the Appellant’s argument that Fajkowski’s system only discloses printed coupons, and we agree with the Examiner’s findings that Fajkowski discloses electronic coupons. (FF 3, 4, 5, 7, 8).

While Appellant may be correct that Fajkowski’s system accommodates traditional paper coupons in certain embodiments, Fajkowski also explicitly discloses other embodiments that use an electronic coupon which avoids paper by transmitting the electronic coupon directly to a

coupon card. (FF 2, 4). This electronic coupon is distributed to consumers through an electronic clearinghouse. (FF 3, 5). In other words, Fajkowski's system distributes electronic coupons directly to users allowing them to redeem the electronic coupons without the need of a traditional paper coupon. (FF 6). It is also evident that the Fajkowski disclosure is directed to addressing the problems and inefficiencies with traditional paper coupons through the use of an electronic coupon system. (FF 1). Thus, in view of the above, the Appellant's argument that Fajkowski does not disclose electronic coupons is not persuasive.

Additionally, the Appellant argues, "[i]n the Fajkowski patent, there is no disclosure of the use of a website where manufactures [sic] post electronic coupons." (Br. 5; *see also* Br. 6). We are not persuaded by Appellant's argument because Fajkowski discloses software that allows a consumer to navigate a service at an Internet site referred to as an "electronic clearinghouse" which is accessible to retailers, manufacturers and consumers via the Internet. (FF 3, 7, 8). Further, Fajkowski discloses that manufacturers supply their future coupons to the clearinghouse in order to reach consumers. (FF 9). In disputing the rejection, the Appellant further misquotes Fajkowski contending that Column 29, lines 45-67 of Fajkowski relied upon by the Examiner discusses paper coupons by reproducing Column 23 (Br. 7), whereas the actual portion of Fajkowski relied upon by the Examiner discusses electronic coupons, and browsing of coupons available on the Internet site. Therefore, in view of the above, the Appellant's argument that Fajkowski does not disclose a website where manufacturers post electronic coupons is unpersuasive.

Regarding independent claim 6, the Appellant makes arguments substantially similar to those discussed *supra* with respect to claim 1. The Appellant argues that “. . . since the printed coupons [of Fajkowski] are scanned into electronic form, the Fajkowski patent makes no disclosure of customers selecting electronic coupons through an internet website.” (Br. 7). We are not persuaded by the Appellant’s argument and find that the Appellant has again, not fully appreciated the disclosure of Fajkowski. As discussed *supra*, Fajkowski discloses a website where manufacturers post electronic coupons. Additionally, contrary to the Appellant’s assertion, Fajkowski discloses software which allows customers to navigate, select, and download electronic coupons from an electronic clearinghouse. (FF 2-8). Thus, the Appellant’s argument that Fajkowski fails to disclose “customers selecting electronic coupons through an internet website” is not persuasive.

Claims 2-3, 5, 7-10, and 12-15

The Appellant does not separately argue claims 2-3, 5, 7-10, and 12-15, which depend from claims 1 and 6 respectively, and so, has not sustained its burden of showing that the Examiner erred in rejecting claims 2-3, 5, 7-10, and 12-15 as anticipated by Fajkowski for the same reasons we found as to claims 1 and 6 discussed *supra*.

ISSUE 2

Claims 4 and 11 rejected under 35 U.S.C. § 103(a) as unpatentable over Fajkowski.

Appellant argues that Fajkowski does not disclose charging a manufacturer for posting electronic coupons on a database, “. . . because in the Fajkowski system, manufactures do not post electronic coupons. All coupons are standard printed coupons that are later scanned into a computer, as has previously been explained.” (Br. 8). However, as discussed *supra* with respect to claims 1 and 6, we are not persuaded by Appellant’s arguments that Fajkowski does not disclose electronic coupons or a website for posting such coupons. The Appellant has made no arguments as to the specific limitations of claims 4 and 11, which depend from claims 1 and 6 respectively. Therefore, the Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 4 and 11 under 35 U.S.C. § 103(a) as unpatentable over Fajkowski for the same reasons we found as to claims 1 and 6 discussed *supra*.

CONCLUSIONS

1. The Appellant has not shown that the Examiner erred in finding that Fajkowski discloses a website where manufacturers post electronic coupons and consumers select from the electronic coupons, as recited in claims 1 and 6.
2. The Appellant has not shown that the Examiner erred in concluding that it would have been obvious to one of ordinary skill in the art

to charge a manufacturer for posting electronic coupons on a database, as recited in claims 4 and 11.

DECISION

1. The decision of the Examiner to reject claims 1-3, 5-10, and 12-15 under 35 U.S.C. § 102(b) as anticipated by Fajkowski is AFFIRMED.

2. The decision of the Examiner to reject claims 4 and 11 under 35 U.S.C. § 103(a) as being obvious over Fajkowski is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ack

cc:

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